

Chapter 8.12

NUISANCES

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8.12.010 Purpose. This chapter is created to regulate nuisances so as to protect the individual's rights to control conditions which may have an offensive and detrimental effect on his person or property, affect the health and/or safety of other persons or obstruct the comfortable use or sale of adjacent property. (Ord. 78-6 § 1 (part), 1977: prior code § 16.120.1).

8.12.020 Definitions. For the purposes of this chapter the following terms are defined as follows:

A. "Animal" means cattle, swine, horses, mules, donkeys, sheep, dogs, cats, goats, rabbits, or any other animal, and chickens, turkeys, geese, pigeons, doves, ducks, or other fowl, and any reptile, including snakes, lizards, turtles.

B. "Garbage" means the putrescible animal and vegetable wastes resulting from the handling, preparation, and consumption of foods.

C. "Health officer" means the health officer of the city of Hoopeston or his/her authorized representative.

D. "Nuisance" means any condition which may be offensive and detrimental to a person or his property or which may constitute a hazard to the health or safety of any person.

E. "Person" means any individual, group of individuals, association, trust, partnership, corporation, person doing business under an assumed name, the state of Illinois or any department thereof, or any other entity.

F. "Premises" includes any parcel of property and the building or structure, if any, which is situated on the property, and any portion of the public way that abuts the parcel of property when it is used in conjunction with the abutting property for the commission of illegal activity.

G. "Residential community" means any village, town, incorporated or unincorporated municipality, recreation area, mobile home park, subdivision, or unplatted residential sites in which two or more dwellings are located within one thousand five hundred feet of each other.

H. "Standard farming practice" means any agricultural practice found on the farm which is recognized as one in wide and general usage for the preparation, growing,

harvesting, and storing of agronomic commodities, or for the production of farm animals. (Ord. 2003-1 § 1, 2002; Ord. 78-6 § 1 (part), 1977: prior code § 16.120.2).

8.12.030 General nuisances designated. The following, except when in conjunction with standard farming practices, are declared general nuisances affecting the health and wellbeing of persons residing within the city or adversely affecting those people's property

A. To cause the carcass of any animal or any offal, manure, trash, sewage discharge, garbage, rubble, filthy or putrid substance or any other offensive or annoying substance to be collected, deposited or to remain in any place, public or private, except that household garbage may be stored in containers with fly-tight lids for a period of time not to exceed seven days, and all of the materials listed above may be disposed of in a sanitary landfill which holds a permit issued by the Illinois Environmental Protection Agency;

B. To throw or deposit any offal, manure, sewage, garbage, trash, litter or other offensive matter, or the carcass of any animal in any watercourse, intermittent waterway, ditch, lake, pond, spring, well, street or public highway;

C. To corrupt or render unwholesome or impure the water of any spring, river, stream, pond or lake;

D. All ponds and pools of stagnant or organically polluted water in which mosquitoes are breeding;

E. Garbage cans without fly-tight lids or garbage cans in poor repair;

F. The burning of garbage in any manner other than in an incinerator which meets construction standards set forth by the Illinois Environmental Protection Agency;

G. Dense smoke, noxious or annoying fumes and odors, vapors, gas, dust, soot, cinders, or other airborne particles in unreasonable or toxic quantities;

H. All buildings, mobile homes, or other structures located in a residential community which have been damaged by fire or have become dilapidated, rundown, or decayed and are so situated as to endanger the health or safety of the public or provide a possible harborage for rodents, insects or other pests;

I. To cause one or more derelict automobile, truck, or other vehicle of conveyance to remain on any property, public or private except in a salvage yard licensed by the state. A "derelict automobile, truck or other vehicle of conveyance" is defined as that which is not currently licensed for operation or is not in an operable condition and is not kept under cover. Except that any derelict automobile, truck or other vehicle of conveyance whether under cover or not which is identified as being a rodent harborage shall be subject to removal from the property;

J. Any manmade hole, cistern, well or other depression made in the surface of the ground which may endanger the health or safety of the public;

K. To deposit or allow to collect, in any residential community, discarded lumber, building material, rubble or any other material on any property, public or private, which may endanger the safety of the public;

L. Any building shed, barn, or other structure or any collection of materials or refuse on public or private property located in any residential community maintained in such a manner that rodents, flies and other pests may exist or breed;

M. To maintain within a residential community any kennel, stable, barn, house, coop, pen, yard or any other place where animals, including pets are kept in an unsanitary

condition whereupon an odor or insect nuisance is created;

N. Any growth of weeds, grasses or bushes to a height greater than eight inches; provided, however, that this subsection shall not apply to planted and cultivated flowers, shrubbery, or other landscaping. (Ord. 89-12 § 1, 1989; Ord. 81-54 § 1(A), 1980; Ord. 78-6 § 1 (part), 1977; prior code § 16.120.3)

8.12.040 Notice of need to remove nuisance — Cost recovery if remedied by city.

A. Removal Costs a Lien on the Property. Whenever it comes to the attention of the police chief or zoning administrator that there exists in the city any condition enumerated in this chapter and defined as a nuisance, he shall forthwith give the person in charge or control of the property thereof notice, served upon such person by a police officer of the city or by mailing such notice to his last known address, that such condition exists, and that he shall have five days from the date of such service in which to remedy the same or the city shall cause the same to be remedied. In the event that a person has received notice under this subsection of a nuisance condition upon his land any further violations by said person under this chapter, whether related to the initial violation or not, within 365 days after the date the last notice of such violation was mailed, shall be prosecuted without further notice or warning.

B. Failure to Remedy Nuisance. If a person fails, refuses or neglects to remedy a nuisance within the time allowed after having been served a notice to abate such nuisance, the police chief or zoning administrator may cause such condition to be remedied. Such action shall not provide a defense for failure to comply with this chapter. In the alternative, the city may, immediately after the expiration of the time specified in the notice, bring suit for violation of this chapter.

C. Removal Costs a Lien on the Property. In the event that payment of the actual costs of the abatement of any nuisance by the city under the provisions of this chapter is not made on demand, such costs shall become a lien upon the property from which such nuisance was abated. The amount of such lien shall be added to the tax roll and collected as unpaid taxes. Any such lien may be foreclosed in the manner provided by law for the foreclosure of liens. In the alternative, the city may sue to recover the actual costs expended by the city in the abatement of any nuisance under the provisions of this code. (Ord. 81-54 § 1(B), (C), (D), 1980; Am. Ord. 95-14, 1995)

8.12.050 Maintaining public nuisance. Any premises used in the commission of offenses prohibited by Sections 9-1, 10-1, 10-2, 11-14, 11-15, 11-16, 11-17, 11-20.1, 12-5.1, 16-1, 20-2, 24-1, 24-3, 28-1, 28-3, 31-5, the “Cannabis Control Act” or the “Illinois Controlled Substances Act” of the Illinois Criminal Code (ILCS Ch. 720, §§ 5 et seq.), or any other activity that constitutes a felony or misdemeanor under federal or state law, and Sections 132.02, 132.21, 133.01, 135.01, 135.02, 135.03, 136.02, 136.03, 138.01, 138.03, 138.11, 138.12, 139.02, 139.03, 140.02, 140.03, is a public nuisance; provided that no public nuisance or violation of this chapter shall be deemed to exist unless; (1) the premises is used for more than one such offense within any six-month period, or (2) the offense for which the premises is used is punishable by imprisonment for one year or more. (Ord. 2003-1 § 1, 2002).

8.12.060 Order of abatement. The Chief of Police or other authorized representative of the city may bring an action to abate a public nuisance described by this chapter. An order of abatement shall be issued whenever a person who owns, manages or controls any premises encourages or permits any of the illegal activity described in Section 8.12.050 on those premises. The order of abatement shall require the taking of reasonable measures designed to prevent the reoccurrence of the illegal activity. Those measures may include, but not be limited to, making improvements to real estate and installing lighting to enhance security, the hiring of security personnel, the hiring of a receiver, or the initiation and execution of eviction proceedings against tenants engaged in illegal activity on the premises. The order of abatement may also authorize the issuance of ex parte administration search warrants reasonably calculated to determine whether the nuisance has been abated or whether the order of abatement has been obeyed. (Ord. 2003-1 § 1, 2002).

8.12.070 Notice of violation. Whenever the Chief of Police or authorized representative of the city reasonably believes that any premises constitutes a public nuisance as described in this chapter, he or she may give written notice to the person who owns or controls the premises stating that a nuisance exists and identifying reasonable abatement measures that must be taken within 30 days of a notice. The notice shall be in writing and may be served in person or sent by certified mail, return receipt requested. The notice shall provide the recipient a reasonable opportunity to meet with a representative of the city to discuss the allegations in the notice and the need for abatement measures. In any proceeding held according to this chapter, when the city establishes by a preponderance of the evidence that the premises for which a notice had been sent is a nuisance as described in this section, the failure to implement the abatement measures identified in the notice, or subsequently agreed to within the 30-day period following the notice, or within any other agreed upon period, shall create a presumption that the person who owns, manages or controls the premises has encouraged or permitted illegal activity in violation of this chapter. The presumption may be rebutted only by a preponderance of the evidence. (Ord. 2003-1 § 1, 2002).

8.12.080 Penalty for violation. A. Any person, firm or corporation violating any provision of Sections 8.12.030 and 8.12.040 or permitting a nuisance to remain on property owned by him shall be subject to the general penalty provisions of this code.

B. Any person who owns, manages or controls any premises and who encourages or permits an illegal activity described in Section 8.12.050 to occur or continue on such premises shall be subject to a fine of not less than \$200 nor more than \$1,000 for each offense plus costs and reasonable attorney fees. Each day that a violation of Section 8.12.050 continues shall be considered a separate and distinct offense. A person may be found in violation of Section 8.12.050 regardless of whether an order of abatement is issued under Section 8.12.060 or whether a notice has been given under Section 8.12.070. In addition to any fine imposed, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction to enjoin any person from maintaining such nuisance. The court may further order that the premises be closed and secured against all use and occupancy for a period of not less than 30 days or may employ any other remedy

deemed appropriate to abate the nuisance.
(Ord. 2003-1 § 1, 2002; Ord. 81-54 § 1(E), 1980)